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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/825,272

Filing Date: April 15, 2004

Appellant(s): KING, LISE

William C. Collard
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 29 November 2006 appealing from the Office action mailed 15 May 2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief, Lise King.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,335,618	Zarola	08-1994
2,538,778	Halpin	01-1951
5,113,793	Leader et al	05-1992
6,584,937	Ludolph	07-2003

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 5-11, 13-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over of U.S. Patent No. 6,374,775 to Baumsteiger in view of U.S. Patent No. 5,335,618 to Zarola and U.S. Patent No. 2,538,778 to Halpin.

Claims 1, 20, and 21, Baumsteiger teaches a collapsible pet stroller comprising:

a) a frame comprising; i) a bottom section (Baumsteiger bottom section Fig. 3 #28), a plurality of rails comprising a first set of substantially vertical rear rails (Baumsteiger Fig. 7 #22) and a second set of substantially forward rails (Baumsteiger Fig. 3 #19 and 18) coupled to said bottom section at a front portion of the frame (Baumsteiger Fig. 1 and 3 at point #30) and coupled to said substantially vertical rails; a handle (Baumsteiger #16) disposed on said frame, iv) a plurality of wheels (Baumsteiger #34) rotatably secured to said frame; and enclosure (Baumsteiger #12); and wherein the forward rails are angled

so that when the portable collapsible enclosure is placed on the frame, the forward rails extend from a first position adjacent to a bottom region of the portable collapsible enclosure to a second position above the portable collapsible enclosure, in a manner to prevent the portable collapsible enclosure from falling off of the frame when the frame and enclosure are in use (Baumsteiger Fig. 1), but is silent on the structural configuration of the enclosure.

However, Zarola teaches an enclosure comprising; i) an enclosure frame (Zarola Fig. 2) forming a bottom section (Zarola #13 and #72) of said enclosure, an outer section (Zarola #14) of said enclosure, and a plurality of end sections (Zarola #20 and 22) of said enclosure, said enclosure frame comprising a plurality of semicircular hoop portions (Zarola Col. 3 line 49; #28) forming a rounded upper surface and a plurality of crossbars; ii) a flexible netting material (Zarola Col. 4 line 10-14 and Fig. 2 #35) secured to said enclosure frame and covering at least approximately one half of a length of said outer section of said enclosure (Zarola teaches there can be a plurality of mesh windows thus constituting approximately $\frac{1}{2}$ of an outer section of Fig. 2) iv) at least one door (Zarola #23) releasably secured to at least one of said plurality of end sections of said enclosure; and a handle (Zarola #31 and 32) mounted to said enclosure for carrying said enclosure; at least one fabric cover (Zarola Col. 3 line 30-32; Fig. 2) covering approximately one half of the length of the enclosure.

Baumsteiger teaches an animal enclosure and stroller for ease of traveling with an animal and that the stroller is designed to carry a "Conventional" pet kennel (Baumsteiger Col. 4 line 12-15) and Zarola teaches an alternate "Conventional" pet

kennel for traveling with an animal (Zarola Col. 5 line 32-45). It would have been obvious to one of ordinary skill in the art to modify the teachings of Baumsteiger with the teachings of Zarola at the time of the invention since the modification is merely the selection of a known alternate equivalent "conventional" pet kennel selected for the feature of being expandable when desired. Baumsteiger as modified by Zarola teaches the angled forward rails extend from a first position adjacent to the bottom region of the enclosure to a second position above the enclosure to prevent the enclosure from falling of the of the frame when in use (Baumsteiger Fgi. 2 #18 and 19).

Baumsteiger as modified by Zarola makes mention of a pad (Baumsteiger Col. 4 line 28), but is silent on a padded material covering the bottom section of said enclosure. However, Halpin teaches a semicircular traveling animal enclosure with a padding material covering the bottom (Halpin fig. 3 #53). It would have been obvious to one of ordinary skill in the art to further modify the teachings of Baumsteiger as modified by Zarola with the teachings of Halpin at the time of the invention for the added soft comfort for the animal, or to incorporate a moisture absorbing material which can soak up sweat or urine.

Regarding Claims 2 and 3, Baumsteiger as modified by Zarola teaches a collapsible frame comprises a plurality of side rails (Baumsteiger #19 and 18) secured to said bottom section (Baumsteiger #28) and a plurality of rear rails (Baumsteiger #22) of tubing secured to said bottom section. Baumsteiger teaches being ruggedly built of tubular material (Baumsteiger Fig. 7 #18), but is silent on metal, however it would have been obvious to one of ordinary skill in the art to further modify the teachings of

Baumsteiger at the time of the invention since the modification is merely the selection of an old and notoriously well-known tubing material selected for intended use to meet certain manufacturing design cost parameters, to prevent the animal from chewing it, and for durability, i.e. selection of a known material for intended use [Leshin 125 USPQ 416].

Regarding Claim 5, Baumsteiger as modified teaches said flexible material is secured to said enclosure frame with adhesive, rivets or binding (Zarola Col. 4 line 33).

Regarding Claim 6, Baumsteiger as modified teaches netting material (Zarola Col. 4 line 13 "mesh"), but does not explicitly teach fish netting. However, it would have been obvious to one of ordinary skill in the art to further modify the teachings of Baumsteiger as modified by Zarola at the time of the invention since the modification is merely the selection of a known form of netting selected as an engineering design choice to meet certain design parameters such as cost.

Regarding Claim 7, Baumsteiger s as modified teaches said netting material is secured to said enclosure frame by rope or string which is wrapped through a hole in said netting material and around said enclosure frame (Zarola Col. 4 line 33).

Regarding Claim 8, Baumsteiger as modified teaches a durable, water resistant material disposed on a portion of said outer section of said enclosure (Zarola Col. 3 line 44).

Regarding Claim 9, Baumsteiger as modified teaches the durable water resistant material covers one of the end section of the enclosure (Zarola Fig. 1 #16).

Regarding Claim 10, Baumsteiger as modified teaches a window cut in the end section that contains the water resistant material (Zarola Fig. 1 #35; Zarola teaches a plurality of windows can be present and it can be viewed that Fig. 2 #36 is an end section or that it would be obvious to locate the window in another wall since it is merely shifting the location of a known element performing the same intended function).

Regarding Claim 11, Baumsteiger as modified teach a pocket located in said end section containing the water resistant material (Zarola Col. 1 line 51).

Regarding Claim 13, Baumsteiger as modified inherently teaches that said durable water-resistant material disposed on a portion of said outer section of said enclosure covers approximately one half of the length of said enclosure (Zarola Col. 3 line 30-31).

Regarding Claim 14, Baumsteiger as modified does not explicitly teach that each of said plurality of wheels is comprised of rubber. However, it would have been obvious to one of ordinary skill in the art to further modify the teachings of Baumsteiger at the time of the invention since the modification is merely the selection of a known material for intended use. It is old and notoriously well-known to use rubber tires, e.g. automobiles etc, selected for its durability and traction.

Regarding Claim 15, Baumsteiger as modified does not explicitly teach that the wheels are removable. However, merely making something separable is an obvious modification for one of ordinary skill in the art and does not present a patentably distinct limitation. It would have been obvious to one of ordinary skill in the art to modify the teachings of Baumsteiger at the time of the invention for the advantage of efficient

storage [*In re Dulberg*, 289 F.2d 522, 523, 129 USPQ 348, 349 (CCPA 1961)] and maintenance and repair.

Regarding Claim 16, Baumsteiger as modified teaches the plurality of wheels comprises four wheels (Baumsteiger Fig. 7 #34).

Regarding Claim 17, Baumsteiger as modified teaches a brake to stop rotation of the wheels (Baumsteiger Fig. 1 the element sticking out of the back wheel).

Regarding Claim 18, Baumsteiger as modified teaches the enclosure frame is constructed from a strong weather-proof material selected from the group consisting of aluminum, steel and heavy plastic (Zarola Col. 3 line 50).

Regarding Claim 19, Baumsteiger as modified teaches the door is releasably secured to at least one of said plurality of end sections of said enclosure by a zipper (Zarola #23 and Col. 2 line 25).

Regarding Claim 22, Baumsteiger as modified teaches a window (Zarola #35). It would have been obvious to one of ordinary skill in the art to further modify the teachings of Baumsteiger at the time of the invention since relocating a known element i.e. shifting the location of a known element to an alternate wall does not present a patentably distinct limitation modified for the advantage of providing increased ventilation or visibility.

Claims 1-3, 5-11, 13-20, and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,374,775 to Baumsteiger in view of U.S. Patent No.

5,335,618 to Zarola and U.S. Patent No. 2,538,778 to Halpin as applied to claims 1-3, 5-11, 13-20, and 22 above, and further in view of U.S. Patent No. 6,584,937 to Ludolph.

Regarding Claims 1-3, 5-11, 13-20, and 22, Baumsteiger as modified by Zarola teaches an enclosure that is covered partly in fabric and partly in netting (Zarola Col. 3 line 30-31 and Col. 4 line 10-14). For purpose of argument, it could also be viewed that Zarola does not explicitly teach that the fabric covers one half of the length of the enclosure. However, Ludolph teaches that it is well-known to provide half of a moving animal enclosure with a fabric and the other half with netting. It would have been obvious to one of ordinary skill in the art to further modify the teachings of Baumstieger as modified by Zarola with the teachings of Ludolph at the time of the invention since the modification is merely the change in size (i.e. length) to provide adequate protection for different size animals from sun and rain (Ludolph Col. 3 line 60)

Claims 20-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,113,793 to Leader in view of U.S. Patent No. 5,335,618 to Zarola.

Regarding Claims 20 and 21, Leader teaches a pet stroller comprising (Leader Fig. 1): a frame comprising; a bottom section (Leader elements #6), a handle disposed on said frame (Leader #3), a plurality of wheels rotatably secured to said frame (Leader #10 and 8); and an enclosure comprising (Leader #2): at least one door releasably secured to at least one of said plurality of end sections of said enclosure (Leader #17); an enclosure frame forming a bottom section of said enclosure, an outer section of said enclosure, and a plurality of end sections of said enclosure; wherein the rails are angled

(Leader Fig. 1 #12) up so that when the collapsible enclosure is placed on the frame, the rails extend from a first position adjacent to a bottom region of the portable collapsible enclosure to a second position above the portable collapsible enclosure, in a manner to prevent the portable collapsible enclosure from falling off of the frame when the frame and enclosure are in use

Leader teaches placing a removable enclosure on the tray and that the enclosure can be partly covered with a fabric or partly exposed for the viewing pleasure of the animal, but is silent on the enclosure frame comprising a plurality of semicircular hoop portions and a plurality of crossbars; a flexible netting material secured to the enclosure frame outer section of said enclosure; and a handle mounted to said enclosure for carrying said enclosure. However, Zarola teaches an animal (Zarola Fig. 2) a portable collapsible (Zarola Col. 1 line 5-13) enclosure comprising semicircular hoop portions and cross bars (Zarola #28 and 72); flexible netting (Zarola Col. 4 line 10-14) material substantially covering the outer section of the enclosure; at least one door (Zarola #23); and a handle (Zarola #31 and 32); a fabric cover covering approximately one half of the length of the enclosure (Zarola Fig. 2 and Col. 3 line 30-31), the fabric cover being coupled to at least two frame components (Zarola Fig. 2 #28 and 30). It would have been obvious to one of ordinary skill in the art to further modify the teachings of Leader with the teachings of Zarola the time of the invention since the modification is merely the selection of an alternate pet traveling enclosure selected for its ability to expand and collapse.

Regarding Claim 22, Leader as modified teaches a window (Zarola #35). It would have been obvious to one of ordinary skill in the art to further modify the teachings of Leader at the time of the invention since relocating a known element i.e. shifting the location of a known element to an alternate wall does not present a patentably distinct limitation modified for the advantage of providing increased ventilation or visibility.

Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,113,793 to Leader in view of U.S. Patent No. 5,335,618 to Zarola as applied to claims 20 and 21 above, and further in view of U.S. Patent No. 6,584,937 to Ludolph.

Regarding Claim 20, Leader as modified teaches providing a grid pattern (i.e. the bars of the cage which are similar to the grid pattern of netting just a different mesh size) to enable the animal to see but to prevent it from getting out of the enclosure. Leader also teaches covering a portion of the grid pattern with a fabric to provide the animal with some shelter (Leader #2). Leader as modified by Zarola teaches an arched enclosure that is covered partly in fabric and partly in netting (Zarola Col. 4 line 10-14). For purpose of argument, it could also be viewed that Leader as modified by Zarola does not explicitly teach that the fabric covers one half of the length of the enclosure. However, Ludolph teaches that it is well-known to provide half of a moving animal enclosure with a fabric and the other half with netting. It would have been obvious to one of ordinary skill in the art to further modify the teachings of Leader and Zarola with

the teachings of Ludolph at the time of the invention since the modification is merely the change in size (i.e. length) to provide adequate protection for different size animals from sun and rain (Ludolph Col. 3 line 60).

(10) Response to Argument

Examiner maintains that Baumsteiger was cited to teach that it is known to place “conventional” pet kennels on a collapsible stroller for ergonomic ease of transporting pets (Baumsteiger Col.4 line 10-15). In essence, Baumsteiger has presented a road map for the combination of a collapsible stroller and a conventional pet kennel for traveling with a pet (Baumsteiger Col. 4 line 24-25). Baumsteiger is silent on the claimed structural features of the pet kennel/enclosure. However, Zarola is cited to teach a pet kennel/enclosure that satisfies the structural limitations of the claimed enclosure. Zarola teaches a pet enclosure designed (Zarola abstract first sentence and Col. 5 line 32-33; Col. 4 line 20-23) for traveling pets. Sufficient motivation for one of ordinary skill in the art can be found in the teachings of both of the references to make the combination of Baumsteiger modified by Zarola. Merely modifying the teachings of Baumsteiger with the teachings of Zarola involves the selection of a known alternate equivalent conventional pet kennel (Baumsteiger Col. 4 line 10-15) selected for its known advantage of being lightweight and easy to erect (Zarola Col. 5 line 32).

Independent claim 1 merely claims that the flexible netting material is covering at least approximately one half of the length of the outer section of the enclosure and that the fabric cover is covering approximately one half of the length of the enclosure.

Independent claim 20 claims that the flexible netting material substantially covers an

outer section of the enclosure. Independent claim 21 does not specify the amount or length of neither the netting nor the fabric. The housing unit of Zarola is the pet enclosure (Zarola Fig.2 and abstract first sentence). The examiner would like to clarify that the examiner is only looking to the housing unit structure of Zarola (Zarola Fig. 2) to satisfy the claim limitations and is not looking towards the attachable run taught by Zarola to meet these limitations. This housing unit is fabricated from fabric canvas (Zarola Col.3 line 30-31) that covers approximately one half of the length of the enclosure (Zarola Fig. 2). Zarola teaches the housing unit can have a plurality of mesh windows (Zarola Fig. 2 #35 and Col. 4 line 10-14), thus the first interpretation could be that the plurality of mesh windows are at least approximately one half of the outer section of the enclosure. Furthermore, applicant claims "of the outer section of the enclosure", but has not delineated the extent of an "outer section" (Zarola Fig. 1 the middle section between the elements #30 could be considered the "outer section"). The second interpretation could be that even though Zarola teaches a plurality of mesh windows Zarola is silent on explicitly defining at least approximately on half of the length of the outer section of the enclosure as claimed. However, the examiner maintains that one of ordinary skill in the art would look to the teachings of Ludolph with an expectation of success. Ludolph was cited merely to teach that it is general knowledge of one of ordinary skill in the art that when providing an animal enclosure to provide equal amounts of covered space and netting space to provide the proper pleasure and comfort for the animal while protecting the animal from exposure to sun and rain.

Leader was cited merely to teach that it is old and notoriously well-known to carry pet enclosures on wheeled carts/strollers to prevent the owner from getting tired by having to carry the animal or the enclosure and depending on the size of the pet the owner might not be able to carry the pet (Leader Col. 1 line 24-25). Leader was cited merely to teach that it is known to place a pet enclosure covered in fabric onto a stroller and the structural components of the stroller. Leader was modified by Zarola since Zarola merely teaches a structurally different alternate pet enclosure. One of ordinary skill in the art would be motivated to modify the teachings of Leader with the teachings of Zarola since the modification is merely the selection of an alternate equivalent enclosure performing the same intended function selected for its known lightweight properties and ease of erecting (Zarola Col.5 line 32-33). The examiner maintains that the side rails of Leader as modified by Zarola (Leader Fig. 1 #12 and 6) are capable of performing the function of preventing the enclosure from falling off of the frame.

Therefore, the examiner maintains that a strong *prima facie* case has been established. The prior art of record establishes the suggestion and motivation to make the combination with reasonable expectation of success without a significant amount of experimentation; and, together teach or suggest all of the claim limitations.

The declarations under 37 CFR 1.132 filed 21 February 2006 are insufficient to overcome the rejection of claims 1-3, 5-11, 13-22 based upon U.S. Patent No. 6,374,775 to Baumsteiger in view of U.S. Patent No. 5,335,618 to Zarola and U.S. Patent No. 2,538,778 to Halpin and U.S. Patent No. 6,584,937 to Ludolph or Patent No. 5,113,793 to Leader in view of U.S. Patent No. 5,335,618 to Zarola and U.S. Patent No.

6,584,937 to Ludolph as set forth because applicant has not provided required "objective" evidence necessary that an art recognized problem existed in the art for a long period of time without solution. Applicant has not clearly established that the commercial success is not attributed to the result of heavy promotion or advertising. The inventor's opinion as to the purchaser's reason for buying the product is insufficient to demonstrate nexus. In view of the foregoing, when all of the evidence is considered, the totality of the rebuttal evidence of nonobviousness fails to outweigh the evidence of obviousness. In other words, the declarations are insufficient to overcome the strong *prima facie* evidence presented by the examiner in the grounds of rejection.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



Andrea M. Valenti
Primary Examiner
Art Unit 3643

22 February 2007

Conferees:

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